IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1370 OF 1992

Vishwanath Dada Tupe & ors. .. Petitioners

versus

Special Land Acquisition Officer No.12

& Anr. .. Respondents

...

Mr.R.A. Thorat for the petitioners.

Smt.S.S. Bhende, AGP for the respondent nos.1 and 2.

CORAM : S.B. MHASE AND

D.G. KARNIK, JJ

DATED : 18th January 2006.

P.C.:

1. Heard the learned counsel for the parties.

2. By this petition, the petitioners challange notifications dated 14th November 1990 and 3rd December 1991 issued under section 4 and 6 of the Land Acquisition Act and the acquisition proceedings initiated for acquisition of the land of the

petitioners.

3. The petitioners are owners of the lands bearing Survey Nos. 620, 620/1 and 618 of Village Kumthe, Taluka.Koregaon, District Satara (for short "the said lands") The State Government intended to construct a link road for Village Kumthe. The proposed road passes through the said land and were therefore they were proposed to be acquired and a notification under section 4 was issued. An enquiry u/s.5A of the Land Acquisition Act, 1894 (for short "Land Acquisition Act") was also held. The petitioners were heard and their objections were overruled and a declaration u/s.6 was made. A notification to that effect was also published. Thereafter, the petitioners have approached this Court challenging the acquisition proceedings.

4. Learned counsel for the petitioners submits that the acquisition is malafide. There is no need of construction of the link road. Village Panchayat of the village Kumthe has also passed a resolution requesting the Government to drop the construction of a link road. Yet the lands are being acquired for a colateral purposes. In paragraph no.5 of the petition, it is further alleged that there are two political groups in the village Kumthe from one Mr. Shankarrao

Jagtap was elected as a member of legislative assembly as a candidate of Congress-I. According to the petitioners, they had opposed the candidature of Mr.Shankarrao Jagtap and therefore, at the instance of Shankarrao Jagtap and his followers and with a view to cause harm to the petitioners, their lands were proposed to be acquired. Even earlier acquisition was initiated in the year 1989 but it was dropped as proper enquiry under section 5-A was not held. Subsequently, the fresh notification was issued malafide and at the instance of Mr.Shankarrao Jagtap. We notice that Mr.Shankarrao Jagtap is joined as a party to the petition. The allegations are malafides in fact, and are made against Mr.Shankarrao Jagtap. As such, it was necessary for the petitioners to join him as a party to the petition. In his absence, we decline to enquire into the allegations of malafides made against Mr.Shankarrao Jagtap.

5. It is then submitted that the gram panchayat of village Kumthe has passed a resolution requesting the Government to cancel the acquisitions. It is to be noted that the gram panchayat is not an acquiring body. The road is being constructed by the Government at its own expenses. At the most, the gram panchayat could have raised an objection to the acquisition in the

enquiry under section 5A of the Land Acquisition Act which could be considered.

6. The land is needed for a public purpose or cannot be doubted that the construction of a road is a public purpose. Whether a particular road should be constructed or not is a matter of policy and unless it is shown that the decision to construct the road has been taken for colateral purposes and with oblique motive, the Court cannot embark upon an enquiry whether construction of a road is really necessary.

7. No other point was urged. In the circumstances, there is no merit in the petition which is hereby dismissed. Rule discharged with no order as to costs.

(D.G.KARNIK, J) **(S.B. MHASE, J)**